

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4454 of 1981

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL & COMPANY KRISHNA IND

Versus

GOVERNMENT OF GUJARAT

Appearance:

MR SI NANAVATI for Petitioners

MR K.M.MEHTA, Asstt.GOV'T. PLEADER for Respondent No. 1

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 14/11/97

ORAL JUDGMENT (PER: K.SREEDHARAN CJ.):

First petitioner -a partnership firm- is engaged in the business of manufacture of castor oil from castor seeds. Second respondent is one of the partners of the firm. The petitioners have filed this petition praying

for the issuance of a writ of mandamus quashing Government Resolutions dated September 26, 1979 and February 27, 1980 and to declare that the petitioner-firm is entitled to a sum of Rs. 1,36,000/- by way of incentive benefit of cash subsidy and a sum of Rs. 37,010.14 by way of sales tax exemption as promised and pronounced by the Government in its resolution dated December 22, 1977.

Short facts necessary for the disposal of this petition are as follows:

The Government by Resolution dated 22-12-1977 extended incentive benefits of cash subsidy for expansion of the existing industrial units as well as new industrial units. A uniform cash subsidy of 10% of the fixed capital investment was offered. For medium and large scale industries, cash subsidy at (i) 8% of the fixed assets or Rs.15 lacs whichever is less in Grade A Growth Centres; (ii) 10% of the fixed assets or Rs. 20 lacs whichever is less in Grade B Growth centres and (iii) 15% of the fixed assets or Rs.25 lacs whichever is less in Grade C Growth Centres, was offered. Petitioner firm is covered under the cash subsidy offered by the Government Resolution. The Resolution further provided for exemption from sales tax and interest free sales tax loan. The Resolution provided that the benefit will remain in force for a period of five years. That means any industry which started within five year from 22-12-1977 was entitled to get benefits. Petitioners, it is alleged, initiated steps to establish an industrial unit. While so the Government withdrew the concessions as per the Government Resolutions dated 26-9-179 and 27-2-1980. As a result of the subsequent Resolutions cash subsidy and sales tax benefit have not been extended to the petitioner firm. The said action of the Government is illegal. The contention of the petitioner is that the Government is bound by their representation made in Resolution dated 22-12-1977 and the benefits extended under the said Resolution are not to be withdrawn within the period of five years mentioned therein. The petitioners have been acting on the basis of those promises and are entitled to the said benefits and the Government is estopped from denying the benefits to the petitioner firm.

The Government while issuing Resolutions dated 26-9-1979 and 27-2-1980 made it clear that the industrial unit which have taken effective steps subsequent to 22-12-1977 will also be entitled to the benefit of the concessions. As per the subsequent Resolutions of

September 1979 and February 1980, the benefits of the Resolution of 22-12-1977 were denied to the industries which were established thereafter. By resolution dated 26-9-1979 Government wanted that cooperative sector to be benefited and not the private sector. While issuing Resolution dated 27-2-1980, edible oil industries were specifically excluded. The entire matter was reconsidered by the Government while issuing Government Resolution dated 15-10-1980, wherein it was stated that the units which have taken effective steps between 22-12-1977 and 26-9-1979 are to be given the benefit of subsidy. It is government's case that while issuing Resolution dated 22-12-1977 the Government had not given any representation that it will not in any circumstances vary the terms of the said Resolution. Taking into consideration the subsequent developments the Government modified their earlier scheme. The industrial units which have taken effective steps immediately prior to the said variation were given protection. The petitioners did not take any effective steps to start the unit any time prior to 26-9-1979. The petitioners as per their letter dated 22-9-1980, a copy of which is placed on record as Annexure A, stated that they were going to place orders for machinery shortly. No noticeable sum was spent by them for constructing the factory building either. Under these circumstances it is contended that the petitioners are not entitled to the benefits of the Resolution dated 22-12-1977.

Annexure A-2 is a copy of the letter dated 22-1-1980 sent by the petitioners to the General Manager, District Industries Centre, Junagadh, wherein it is specifically averred that they were going to place orders for machinery shortly. It means that until 22-1-1980 the petitioners had not placed any order for machinery. Towards the construction of the building the petitioners spent a sum of Rs.50,000/- as against the total cost of the building amounting to Rs.3,87,812/-. Thus, it is seen that the petitioners had not expended any noticeable amount towards the construction cost of building till 22-1-1980. Before they could complete the construction of the building the benefit of Resolution dated 22-12-1977 was withdrawn by the Government. Therefore, the petitioners cannot claim that the Government is estopped from denying the benefit of Resolution dated 22-12-1977.

We have gone through the Government Resolution dated 22-12-1977 in its entirety. We could not find any provision therein which debarred the Government from varying the terms of that Resolution. Since there was

nothing preventing the Government from varying the terms of the said Resolution dated 22-12-1977, it cannot be held that the Government was estopped from altering the terms of the said Resolution. Since Resolution dated 22-12-1977 did not contain any term that the benefits offered therein will not be altered from time to time, the petitioners cannot raise a contention that the Government is estopped from denying the benefits to them even after the said Resolution was altered. The mere fact that the petitioners started an industrial unit within the period of five years mentioned in the resolution dated 22-12-1977 will not entitle them to get the benefit of that Resolution since that Resolution was itself varied on a later date. The law on this point is made clear by the Apex Court in Arvind Industries & others Vs. State of Gujarat & Ors, (1995) 6 SCC 53.

As a matter of fact, the petitioners have not succeeded in showing that they established an industrial unit any time prior to 26-9-1979 consequently they cannot have the benefit of Resolution dated 22-12-1977 which was varied by the Government by Resolution dated 26-9-1979.

The result therefore, is that the petitioners are not entitled to any of the reliefs prayed for in this petition. The petition fails and is accordingly dismissed. Rule is discharged with no order as to costs.

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